reconciliations, and deliberations, with hundreds of distinct issues firmly resolved, the Texas PUC has advised this Commission "that SWBT has taken the statutorily required steps to open its local exchange and exchange access markets in Texas to competition." Texas PUC Evaluation at 1. There can be no question that the Texas Commission's assessment deserves the same "substantial weight" as was afforded the determinations of the New York PSC. New York Order ¶ 51. DOJ, for example, specifically applauds the Texas Commission's "carefu[l]," "extensiv[e]," and "admirable" review. DOJ Evaluation at 3, 49.

Nevertheless, the Department has concluded – after its own 35-day review – that two (and only two) issues remain that would warrant denial of Southwestern Bell's Application. Id. at 2-3. These issues are access to xDSL-capable loops and hot-cut performance. Not coincidentally, they are the same issues on which the CLECs focus. Attachment 1 to this Reply Brief details the Department's failures to consider key evidence, and the consequences of its reliance on isolated CLEC allegations or episodes rather than the full picture of Southwestern Bell's compliance over a period of time. In this section, however, we address the two issues thought by the Department to be dispositive. Although this is where DOJ believes the case against Southwestern Bell to be strongest, the record facts show that Southwestern Bell is providing a level of service that broadly meets the relevant numerical performance standards, and provides CLECs a meaningful opportunity to compete.

A. Southwestern Bell Satisfies Both of the Commission's Alternative Tests for Demonstrating Nondiscriminatory Access to xDSL-Capable Loops

Although Bell Atlantic and Southwestern Bell have provisioned approximately the same number of xDSL loops to CLECs in New York and Texas, respectively, see New York Order ¶ 321, far more has been done in Texas to ensure nondiscriminatory access to these loops than had been done in New York. Specifically,

- There are multiple layers of review and diverse safeguards in Texas that are in stark contrast to the incomplete record put before this Commission in the Bell Atlantic New York proceeding. See id. ¶¶ 317-322.

- Telcordia's OSS testing of Southwestern Bell's systems included xDSL; KPMG's New York testing did not.

- The Texas PUC has established extensive performance measurements covering every aspect of xDSL services, whereas the New York PSC was only considering xDSL performance measures.

- The Texas PUC, unlike the New York PSC, has put in place an array of penalties and payments that give Southwestern Bell the strongest possible incentive to meet its established performance measures.

- Unlike the New York PSC, the Texas Commission has already undertaken an extensive review of Southwestern Bell's pre-ordering, ordering, and provisioning systems for xDSL services, and has verified the monthly performance data submitted by Southwestern Bell.

- The concerns expressed by DOJ about Bell Atlantic's shortcomings in New York have been specifically addressed by the Texas PUC.

- Finally, whereas Bell Atlantic only "committed" at the 11th hour to establish a separate advanced services affiliate as defined by the SBC/Ameritech Merger Order, see New York Order ¶ 331 n.1036, ASI is already up and functioning.

All these factors led the Texas PUC to conclude unanimously – based on SBC's processes, performance data, structurally separate affiliate, and performance payment obligations as a whole – that "SWBT ha[s] met its obligation . . . to provide access to unbundled xDSL-capable loops." Texas PUC Evaluation at 60.

That conclusion is amply supported by the evidence. Indeed, Southwestern Bell's Application shows through several different types of evidence that Southwestern Bell is meeting CLECs' demand for xDSL-capable loops. This evidence included Telcordia-supervised testing of Southwestern Bell's capabilities; successful provisioning of xDSL-capable loops; Southwestern Bell's heightened performance guarantees for xDSL and nascent services; SBC's establishment of a separate affiliate to provision SBC's own advanced services; and SWBT's

offering of special discounts on unbundled loops for CLECs' advanced services. Southwestern Bell Br. at 39-45.

This range of evidence is remarkable given that, as in New York and other states, CLECs in Texas have sought unbundled loops to provision xDSL service for a "relatively short period of time." New York Order ¶ 322. CLECs in Texas did not begin to order xDSL-capable loops in significant volumes until September 1999. Chapman Aff. ¶ 4 (App. A, Part A-2, Tab 2). As of the end of December 1999, Texas CLECs had less than 1,000 xDSL-capable loops in service. Id. This represents a miniscule fraction of the 166,000 unbundled loops that Southwestern Bell had provided CLECs as of November 30, 1999. See Habeeb Aff. Attach. E.

Despite the tiny fraction of all loop provisioning at issue, the Texas PUC made xDSL-capable loops a key part of its investigation of SWBT's compliance with Checklist Item (iv). Unlike the situation in New York, where the state commission began to address xDSL only a month before Bell Atlantic filed its application, New York Order ¶ 317, the Texas PUC extensively considered and resolved these issues before Southwestern Bell filed its Application. The Texas PUC invited all interested CLECs to send orders for DSL-capable loops in order to assess SWBT's pre-ordering, ordering, and provisioning systems as part of the carrier-to-carrier OSS test. Telcordia developed the methodology to be used in this testing in collaboration with Covad and other CLECs such as AT&T and MCI WorldCom. Only two, however, CLECs ultimately participated during the spring and summer of 1999, and they were unable to send large volumes of orders to SWBT. Telcordia Final Report at 9 (App. D, Tab 76). Nevertheless, Telcordia itself reviewed SWBT's systems and procedures for handling xDSL-capable loop inquiries and orders. SWBT passed every single test, leading Telcordia to conclude that SWBT provided timely loop qualification information and order processing and that there were no open

issues relating to ADSL. Id. at 78. In contrast, carriers in New York had only just "agreed to joint testing . . . procedures for xDSL loops." New York Order ¶ 319.

To ensure that CLECs have nondiscriminatory access to xDSL-capable loops, the Texas PUC, again unlike New York, also developed xDSL-specific performance measurements with input from Southwestern Bell and CLECs. Thirteen performance measurements assess every aspect of the pre-ordering, ordering, and provisioning process for xDSL-capable loops. These performance measures cover all five reporting categories identified in the New York Order, and each has a detailed business rule for implementation. Dysart Aff. ¶¶ 21-59; see Response to DOJ, at 12-15. Unlike Bell Atlantic, moreover, SWBT is subject to substantial penalties for any failure to meet these performance measures. Indeed, SWBT's payments for deficient performance were as much as trebled for a number of these measures, to ensure that SWBT has the strongest possible incentives to comply with the governing performance standards. Dysart Aff. ¶¶ 48-50, 54. In the Bell Atlantic New York proceeding, by contrast, the state commission was only "in the process of developing xDSL-specific performance standards and measures" and had not established any payment penalties. New York Order ¶ 317.

Unlike Bell Atlantic in New York, SWBT has a track record of commercial performance in providing xDSL-capable loops to Texas CLECs. In New York, the state commission "expect[ed]" Bell Atlantic "to begin officially reporting its performance to the New York Commission and competing carriers" during the month after Bell Atlantic's application was approved. New York Order ¶ 317. In Texas, by contrast, statewide performance measurement results for September through December demonstrate that, with few exceptions, SWBT meets the applicable performance standards in four of the five areas deemed relevant by the FCC – average installation interval, quality of loops provisioned, timeliness and quality of maintenance

and repair, and access to pre-ordering and ordering OSS functions including access to loop qualification information. See Response to DOJ, at 9-15; New York Order ¶ 335. SWBT's numerical performance is out of parity in but one of the five performance categories – meeting installation appointments on the due date. That performance disparity is the result of SBC's lawful, interim ability to provide retail data services over existing voice lines, whereas data CLECs have elected not to compete for their customers' existing voice services, and hence generally require new unbundled loops. See Dysart Reply Aff. ¶ 31.

The Texas PUC also conducted proceedings directly to address DOJ's concerns about access to xDSL-capable loops, as they were expressed in the Bell Atlantic New York proceeding. See Evaluation of the Department of Justice at 23-28, CC Docket No. 99-295 (FCC filed Nov. 1, 1999). Around the time that the DOJ questioned whether Bell Atlantic had the capability of delivering nondiscriminatory access to xDSL-capable loops, the Texas PUC initiated an intensive, six-week evaluation of SWBT's existing performance in the provisioning of xDSL services, which specifically addressed the concerns DOJ expressed about the Bell Atlantic application. Indeed, working in collaboration with the Texas PUC Commissioners and staff, and with the data CLECs, SWBT addressed every issue that had been voiced in either Texas or the Bell Atlantic New York proceedings. SWBT committed to and then implemented an array of enhancements to its pre-ordering, ordering, and provisioning systems that addressed outstanding concerns. See Texas PUC Evaluation at 63-64. And, as noted above, SWBT established additional performance measurements that focus specifically on the xDSL-related services and facilities utilized by data CLECs. The New York PSC, of course, had no similar opportunity to conduct proceedings in response to DOJ's concerns about Bell Atlantic's performance.

SWBT's provision of nondiscriminatory access to unbundled xDSL-capable loops was thus one of "the most thoroughly examined issues" in Texas. Id. at 60. At the end of its investigation, the Texas Commission unanimously concluded that SWBT provides CLECs a meaningful opportunity to compete in the provisioning of xDSL services. Id. at 64.

All of this occurred primarily at the state level, in Texas. Meanwhile, at the federal level, Southwestern Bell was committing to additional safeguards. In the SBC/Ameritech merger proceeding, Southwestern Bell agreed to "a structural mechanism to ensure that competing providers of advanced services receive effective, nondiscriminatory access" to SWBT's facilities and services. SBC/Ameritech Merger Order, 14 FCC Rcd at 14859, ¶ 363. SBC's separate advanced services affiliate in Texas, ASI, has obtained certification to provide advanced services and began providing those services on February 2, 2000, after opting into the Texas 271 Agreement. By the end of February, ASI will be using the same ordering and provisioning systems and procedures used by CLECs in Texas. See Brown Aff. ¶ 5 (App. A. Part A-3, Tab 2). ASI operates in accordance with the structural separation requirements established by the SBC/Ameritech Merger Order, although SBC voluntarily has accelerated the implementation schedule set forth in the merger conditions. See Brown Aff. ¶ 30; Brown Reply Aff. ¶¶ 4,8; Ramsey Reply Aff. ¶ 4; Weber Reply Aff.

In short, on every point addressed in the New York Order, Southwestern Bell thus comes before this Commission in a much stronger position than did Bell Atlantic. SBC is today where Bell Atlantic promised to be. Indeed, by providing verified performance data showing nondiscrimination as well as establishing an operational separate subsidiary, Southwestern Bell has satisfied both of this Commission's alternative options for demonstrating nondiscriminatory access to xDSL-capable loops. See New York Order ¶¶ 330-335.

1. DOJ's Attack on SWBT's Performance Data Does Not Undermine Southwestern Bell's Proof

The Department urges this Commission to dismiss Southwestern Bell's independently verified, Texas PUC-approved performance reporting as unreliable, and therefore to hold that Southwestern Bell cannot show nondiscriminatory performance regardless of its separate affiliate. DOJ Evaluation at 10-17, 24-27. The Department additionally (and inconsistently) claims that "several performance measures that the Texas PUC has deemed competition affecting" can be relied upon, and that these selected measures show deficient performance. Id. at 18-23. Attachment 1 to this Reply Brief, Southwestern Bell's "Response to the Department of Justice's Evaluation," addresses the Department's arguments one-by-one, in detail. See Response to DOJ, at 8-16. As there explained, and as summarized below, the Department's two categories of concerns about Southwestern Bell's performance are both unfounded.

Reliability of Performance Data. Each month, SWBT provides more than 395,000 separate reports for various aspects of its performance in serving Texas CLECs. Dysart Reply Aff. ¶ 2. With that huge number of reports, mistakes sometimes will be made. DOJ has focused on two isolated mistakes and concluded therefrom that all of SWBT's data is unreliable. That inference is unjustified.

Telcordia, for instance, found that SWBT's accuracy rate in reporting was 99.94 percent. Dysart Aff. ¶ 70 (App. A, Part A-5, Tab 1). That is an extraordinarily high percentage given that errors are especially likely in connection with new reporting requirements and new areas of reporting, such as DSL. See Dysart Reply Aff. ¶ 16. This Commission has itself noted that there will be "inevitable startup problems" with any complex activity, which will not stand in the way

of section 271 relief if they are "resolved quickly." [9] And the Commission noted and excused at least two data reporting errors in the Bell Atlantic New York proceeding, including "significant errors in [Bell Atlantic's] New York Carrier-to-Carrier Performance Reports." New York Order ¶¶ 71 n.145, 164 n.504.

There are multiple layers of protections in place to ensure that any reporting errors that do occur are detected and corrected. Telcordia verified SWBT's reporting and made recommendations for improving SWBT's processes and procedures, which have been implemented. See Southwestern Bell Br. at 16-17; Dysart Aff. ¶¶ 65-76. Each month's reports are sent to the CLECs whose activities are reported, as well as to the Texas PUC, FCC, and DOJ for their review. Dysart Aff. ¶¶ 61-62; Dysart Reply Aff. ¶ 10. Every six months, performance-measurement issues will be reviewed jointly by SWBT, the Texas PUC, and CLECs to ensure their accuracy and appropriateness on an ongoing basis. Dysart Aff. ¶ 45. These are the sorts of considerations and safeguards that underlie the Texas PUC's determination that SWBT's performance reporting is reliable and that sufficient steps have been taken to "ensure accurate reporting" for DSL and other new services. Texas PUC Evaluation at 63, 109, 111.

Overlooking all of these facts, the Department confuses a very small number of corrections to reported data with flaws in Southwestern Bell's reporting itself. Implementation of new performance measures for xDSL required changes to SWBT's performance reports, and two mistakes were made in that process. On Performance Measurement ("PM") 62 (Average Delay Days for SWBT-Caused Missed Due Dates), a single cell on a spread-sheet – one out of

[9] Memorandum Opinion and Order, Application of BellSouth Corp., BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region,

50 million similar cells – was filled-in incorrectly. See Dysart Reply Aff. ¶ 29. This error was detected by the Commission staff and was promptly corrected. Id. A new service code for DSL was entered so that some orders for xDSL-capable loops were reported as orders for resold ADSL services, for purposes of Performance Measurement 55.1 (Average Installation Interval – DSL). Id. ¶ 18. This error was identified by NorthPoint and has been corrected. Id. The corrected data show better performance by SWBT, ruling out the possibility of intentional misstatement. Id.

Two other alleged flaws in reporting were not errors at all, but rather correct reporting of Performance Measurement 57 (Average Response Time for Loop Make-Up Information) and Performance Measurements 5 and 6 (firm order confirmations ("FOC")) in accordance with Texas PUC guidelines. Id. ¶¶ 37, 39. Likewise, supposed undercounting of Covad orders for purposes of Performance Measurement 55.1 is attributable simply to the coding error previously discussed. Once SWBT resolved the coding problem, SWBT's data for the number of Covad loops installed are essentially identical to Covad's own internal estimation. Id. ¶ 22. In fact, the figures are within 3 percent of one another. Id.[10] Likewise, when NorthPoint's ISDN orders are added to SWBT's properly coded xDSL figures, NorthPoint and SWBT have almost identical counts for xDSL-capable loops. Id. ¶ 21.

InterLATA Services in Louisiana, 13 FCC Rcd 20599, 20651, ¶ 78 (1998) ("Second Louisiana Order").

[10] Both Covad and NorthPoint participated in a data reconciliation with SWBT and the Texas Commission staff at which the two CLECs could have voiced any of the concerns now raised in their comments. See Chapman Reply Aff. ¶ 22; Texas PUC Evaluation at 63. Indeed, while DOJ blames SWBT for failing to recognize and correct problems sooner, DOJ Evaluation at 15-17, the CLECs bear at least some responsibility for failing to point out discrepancies they now say were obvious.

DOJ lastly asserts that SWBT "refused" to participate in acceptance testing, supposedly ordered by the Texas PUC, that would confirm installation dates for xDSL-capable loops. DOJ Evaluation 16-17. In fact, the Texas PUC has never ordered acceptance testing, but SWBT has voluntarily offered to conduct acceptance testing and has engaged in cooperative acceptance testing with both Covad and NorthPoint since the fall of 1999. See Swearingin Aff. (attached as Attach. B to Chapman Reply Aff.); see also Chapman Reply Aff. ¶¶ 8-10. Rhythms, the complaining CLEC cited by DOJ, simply decided against including terms for acceptance testing in its agreement with SWBT. See id. ¶ 11.

Performance Results. Having dismissed Southwestern Bell's performance reports as entirely unreliable, the Department in its next breath picks out data for 6 of 13 relevant DSL measurements, in a few selected months. DOJ Evaluation at 17-24. As Attachment 1 explains, DOJ ignores entire measures as to which SWBT has met or exceeded parity or the relevant benchmark, as well as recent months in which SWBT has been in parity for measures the Department does discuss. See Response to DOJ, at 12-14. In this embrace of a single month's data for a selection of measures, the Department ignores (or perhaps seeks to exploit) a point highlighted in Southwestern Bell's Application as well as the New York Order: particularly where (as here) CLEC volumes are low, performance data must be viewed in light of its statistical limitations. This requires examination of related measures and multiple months of performance, as well as consideration of the reasons for any performance deficiencies, to assess actual performance. See Southwestern Bell Br. at 19-20; New York Order ¶ 59.

The Department's failure to consider these issues fully explains the Department's mis-assessment of four of the five relevant measurement categories identified by the Commission in paragraph 335 of the New York Order. In fact, as we show below, SWBT's performance in

providing xDSL-capable loops to CLECs in Texas is at parity or the Texas PUC's benchmark level with respect to the quality of xDSL-capable loops, the timeliness of maintenance and repair, the quality of maintenance and repair, and access to OSS functions including loop information. Performance differences in the fifth category (installation intervals) are attributable to basic provisioning differences that will disappear when line sharing is implemented in accordance with FCC orders.

Average Installation Intervals (PM 55.1). SWBT has consistently been in parity for non-conditioned loops, which represent about 86 percent of all xDSL-capable loop orders reported in Performance Measurement 55.1. See Chapman Aff. ¶ 59. DOJ is focusing on the 14 percent of DSL orders that are for conditioned xDSL-capable loops. These orders, for conditioned xDSL-capable loops, represent less than 200 out of the 166,000 unbundled local loops provisioned by SWBT through November 1999. Even here, SWBT was at parity during two of the four months between September and December 1999. See Response to DOJ, at 12. This performance plainly provides data CLECs an opportunity to compete.

Loop Quality (PM 59). During three of the four months from September to December, SWBT provided CLECs parity with SBC retail in the area of trouble reports. See Response to DOJ, at 13. The Department cites only the single out-of-parity month. DOJ Evaluation at 20.

Maintenance and Repair (PMs 65, 67, and 69). DOJ relies on the one month of below-parity performance for one of three relevant measures. The Department ignores three straight months of parity performance for the trouble report rate measurement it does cite, as well as two additional measures (for mean time to restore and repeat troubles) that were in parity during both of the two months with data. See Response to DOJ, at 14.

Access to OSS Functions (PM 57). SWBT provided CLECs parity in every month from September through December, with respect to timely access to loop make-up information. See Response to DOJ, at 15. The Department suggests that SWBT should have calculated this measure differently, and SWBT agreed in December to do so; SWBT was in parity during the first month of the new reporting. Id. at 10; Dysart Reply Aff. ¶¶ 34-35. Although the Department now suggests that SWBT should have been providing data specifically for FOCs on xDSL loop orders, DOJ Evaluation at 14, the Department itself approved a list of 66 performance measurements as sufficient for section 271 relief. That list, which the Texas PUC subsequently doubled, did not include the disaggregated xDSL loop FOC measurement that the Department now suggests is critical and that SWBT has already agreed to report beginning with February 2000 data. See Response to DOJ, at 10; Dysart Reply Aff. ¶ 41. In the interim, Southwestern Bell is able to show that CLECs' allegations of poor FOC performance are incorrect; we do so in Part II.A.2, below.

With respect to the fifth category of performance reporting identified in the New York Order, **missed installation appointments** (PMs 58, 60, and 62), the Department fails to "examine the evidence further," as is required when performance measurements do not alone establish nondiscrimination. New York Order ¶¶ 58-59. For example, DOJ relies on results for a single measure – Performance Measurement 58-09 (SWBT-Caused Missed Due Dates) – that, standing alone, suggest SWBT is not providing parity performance. The underlying cause, however, is lack of facilities – i.e., UNE loops – to fill data CLECs' requests. See Dysart Reply Aff. ¶ 31. This is significant because SWBT's missed due date measures compare missed due dates in provisioning xDSL-capable unbundled loops for CLECs with missed-due dates in provisioning SBC's retail ADSL service. This comparison is, for the moment, inherently flawed.

id.; cf. New York Order ¶ 173 (rejecting DOJ reliance on flawed performance measure). When SBC provides ADSL service, it is also providing voice services to the end-user customer over the same line, and hence is "line sharing." With "line sharing," it is not necessary for SBC to obtain a separate UNE loop for ADSL. Data CLECs, on the other hand, provide DSL over a second loop and have made the business decision not to provide voice services over that loop.[11] Therefore, until "line sharing" is available, they order a separate UNE loop to provide their data services. If a UNE loop is not available, SWBT will miss the installation due date – a situation that rarely arises on the retail side because ADSL in Texas is typically provided by SBC over the customer's existing voice line. With implementation of the FCC's Line Sharing Order,[12] CLECs will be able to use the data channel of existing SWBT voice lines. This should make the existing missed due date measures true parity comparisons, which they are not today.[13]

Indeed, when misses due to lack of facilities are removed from the calculation of Performance Measure 58-09, the level of missed due dates drops to 5 percent for CLECs versus 6 percent for SBC retail in December, which is in statistical parity. Dysart Reply Aff. ¶ 31. The

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[11] If CLECs chose to offer voice services, they could share the voice line in precisely the same way as SBC. But CLECs don't want to offer voice service; they just want to share SBC's voice channel.

[12] See Third Report and Order in CC Docket No. 98-147, Fourth Report and Order in CC Docket No. 96-98, Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147, FCC 99-355 (rel. Dec. 9, 1999) ("Line Sharing Order").

[13] Under the Commission's Line Sharing Order, which became effective on February 9, 2000, SWBT has no obligation to unbundle the data channel of existing voice lines until June 2000. The assertion made by both Rhythms and Sprint that SWBT must presently offer a concrete and detailed showing of how SWBT will satisfy this order is mistaken. See Rhythms Comments at 43-44; Sprint Comments at 58. Moreover, even when SWBT's obligation to unbundle the data portion of the loop becomes effective in June, the Line Sharing Order still will not require SWBT to provision DSL services to the customers of other carriers. The alleged obligations invoked by AT&T simply do not exist. See AT&T Comments at 13.

differences in prior months are somewhat higher, but sufficiently low to offer CLECs a meaningful opportunity to compete. See Dysart Aff. ¶ 358. This is particularly so given that SWBT (unlike Bell Atlantic in New York) already provides data CLECs "the economic equivalent of line sharing," in the form of a 50-percent discount off the monthly recurring charge and the non-recurring line charge for full unbundled loops used to provide advanced services in a manner that would be compatible with SWBT/CLEC line sharing. See Southwestern Bell Br. at 44-45 (quoting SBC/Ameritech Merger Order, 14 FCC Rcd at 14862, ¶ 369).

The Department likewise points to several measures as evidence of discrimination in the provisioning of ISDN Basic Rate Interface ("BRI") loops. DOJ Evaluation at 21-23. Once more, the facts behind the data disprove the Department's allegation. ISDN BRI loops are used by CLECs to provide IDSL service, but IDSL is not entirely compatible with the industry-standard ISDN loop. To address this problem faced by CLECs, SWBT has gone beyond its legal and contractual obligations and redesigned or reassigned loops so that they will be better suited to providing the IDSL service. Chapman Reply Aff. ¶¶ 13-17. It is this effort to accommodate CLECs through special arrangements that has lengthened the provisioning process and resulted in missed appointments and increased troubles for ISDN BRI loops. Id. ¶¶ 17-19. Thus, the Department's claim to have discovered "substantial discrimination" in provisioning of ISDN BRI loops is unfounded. DOJ Evaluation at 21.

2. Additional CLEC Allegations of Discrimination Are Likewise Unfounded

As the foregoing suggests, the Department's Evaluation is merely a one-time snap-shot of a fraction of the relevant data, which treats allegations as facts and does not go beneath the surface to examine the actual competitive realities in Texas. It thus is quite unlike the Texas PUC's assessment, which benefits from that Commission's hands-on experience with

arbitrations, complaint proceedings, rulemakings, OSS testing, performance measurement development, and the Collaborative Process work sessions. At bottom, the Department relies uncritically on the very same CLEC allegations that were fully aired in Texas, and rejected by the Texas PUC after close examination. Below, we address key allegations about Southwestern Bell's provision of xDSL-capable loops that were not adopted wholesale by the Department in its Evaluation, and thus have not already been discussed above. These allegations were directly rejected by the Texas PUC and implicitly found insignificant by the Department, and properly so.

Availability of Loop Make-Up Information. Covad, NorthPoint, and Rhythms each contend that SWBT does not provide nondiscriminatory access to OSS functions related to xDSL-capable loops. See Covad Comments at 6-9; NorthPoint Comments at 13-17; Rhythms Comments at 19-34. In fact, SWBT provides CLECs access to the same loop make-up information that is available to SBC's retail operations. See New York Order ¶¶ 140-144.[14]

[14] Under SWBT's agreement with Covad, SWBT has a concrete and specific legal obligation to provide nondiscriminatory access to OSS functionalities, as well as to unbundled xDSL-capable loops. See SWBT – Covad Interconnection Agreement (Tex. PUC approved Jan. 27, 2000). SWBT and Covad filed this agreement with the Texas Commission on December 30, 1999, and the Texas Commission approved the agreement at its January 27, 2000 Open Meeting. On February 9, 2000, the Texas Commission issued a formal Revised Order Approving Interconnection Agreements, Petition of Accelerated Connections Inc., d/b/a ACI Corp. for Arbitration to Establish an Interconnection Agreement with Southwestern Bell Telephone Company, Docket Nos. 20226 & 20272 (Tex. PUC Feb. 9, 2000) (App. B, Tab 6). Because this interconnection agreement will be a part of the Texas 271 Agreement, see Texas PUC Jan. 27 Open Meeting Tr. at 110; Texas 271 Agreement Attach. 25 §§ 10.1-10.2, any CLEC may opt into it effective immediately.

SWBT's obligation to provide nondiscriminatory access to its OSS functionalities and to xDSL-capable loops actually predates this final agreement by several months. In May 1999, SWBT and Covad reached an interim agreement that provided Covad every element needed to provision DSL service in Texas. See Testimony of Covad Counsel Clay Deanhardt before the Illinois Commerce Commission at 2494, SBC Communications Inc., et al., Joint Application for

While Covad and NorthPoint seek to conflate SWBT's pre-qualification and qualification procedures, the pre-qualification and qualification processes are separate, and each provides exactly the same information to all carriers in exactly the same time frame. As the FCC recognized in its Advanced Services Order,[15] CLECs have "a meaningful opportunity to compete" when they are "able to determine during the pre-ordering process as quickly and efficiently as can the incumbent, whether or not a loop is capable of supporting xDSL-based services." 13 FCC Rcd at 24038, ¶ 56.

Loop Pre-Qualification. All providers of xDSL services have identical, real-time access to SWBT's "pre-qualification" database, enabling every carrier to make a preliminary determination as to whether the envisioned service can be provisioned to a particular customer address. Chapman Aff. ¶¶ 7, 9. For its retail advanced services, SBC currently uses the Complex Service Order System ("CPSOS") to access this database, whereas CLECs utilize the DataGate or Verigate interfaces. DataGate and Verigate each provide real-time access to pre-qualification information. Chapman Reply Aff. ¶ 58. In any event, as provided in the SBC/Ameritech Merger Order, ASI will begin using DataGate exclusively in Texas on or before April 5, 2000. See Brown Aff. ¶ 5.

Rhythms alleges that CPSOS is an integrated system that enables SBC retail pre-qualification inquiries to flow through directly to SWBT's ordering system, whereas CLECs using DataGate or Verigate must take the additional step of placing orders through LEX or EDI.

Approval of the Reorganization of Illinois Bell Telephone Company, Docket No. 98-0555 (App. B, Tab 7).

[15] Memorandum Opinion and Order and Notice of Proposed Rulemaking, Deployment of Wireline Services Offering Advanced Telecommunications Capability, 13 FCC Rcd 24012 (1998) ("Advanced Services Order").

See Rhythms Comments at 26. This is incorrect. Chapman Reply Aff. ¶ 58. But regardless, Rhythms' contention will be mooted in Texas by February 28, when ASI begins to order DSL loops through the same processes and procedures as are used by CLECs. See Brown Aff. ¶ 5.

Loop Qualification. SWBT provides equivalent access to "loop qualification," the detailed, end-user specific loop make-up information a carrier needs to choose a particular xDSL service. As described in SWBT's OSS Plan of Record, which SWBT distributed on December 7, 1999, in compliance with the terms of the FCC's SBC/Ameritech Merger Order, SWBT is currently surveying its entire electronic and paper database of loop make-up information to develop a more mechanized loop qualification system. Until that system becomes operational, SWBT engineering personnel gather loop make-up information for SBC's retail operations and CLECs alike through largely manual searches of loop databases. Chapman Aff. ¶ 32. In the New York Order, the Commission explicitly found manual processing to be consistent with the 1996 Act and the competitive checklist so long as it provides CLECs and the incumbent access to "loop qualification information in substantially the same time and manner." Id. ¶ 143. Likewise, the Texas Commission has found that SWBT's mechanical and manual processes provide nondiscriminatory access to loop make-up information. Texas PUC Evaluation at 60.

Covad's and Rhythms' assertion that SBC retail personnel have real-time access to information not available to CLECs is demonstrably false – the mechanized database that would be needed for real-time access does not exist.[16] See Covad Comments at 14; Rhythms

[16] The arbitrators in the Texas PUC's Rhythms Links arbitration found that SWBT personnel who assisted in the development of retail products had some direct, manual access to the databases. However, those same personnel provided similar assistance to CLEC product development. In other words, some personnel bring expertise to both efforts – retail and wholesale. This dual function is necessary to assure parity, as some personnel serve as

Comments at 25. Once a mechanized database is developed, ASI will gain access to loop make-up information through the same DataGate or EDI functionality used by CLECs. This transition additionally will address NorthPoint's claim that the information contained in SWBT's existing databases is sometimes inconsistent with information received through the pre-qualification tool,[17] as well as NorthPoint's assertion that it has received the wrong loop qualification reports. See NorthPoint Comments at 15, 18; DOJ Evaluation at 13 n.26.

CLECs' "Internal Data" Regarding Loop Qualification. Although SWBT's performance data show timely access to loop qualification information, Covad, NorthPoint, and Rhythms invoke their allegedly contrary individual "experiences." Pointing to unverified "internal data," Covad contends that SWBT took an average of 5.8 and 6.7 days to respond to Covad's SDSL and ADSL inquiries, respectively. Covad Comments at 33. NorthPoint similarly asserts that "SWBT often misses its 3-5 day loop qualification interval." NorthPoint Comments at 16. The CLEC-specific data provided by SWBT to Covad and NorthPoint tell a markedly different story. As shown in the Reply Affidavit of William Dysart, Covad and NorthPoint actually receive loop

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company-wide experts on matters such as the functionality of a particular database. See Chapman Reply Aff. ¶ 37. To ensure that information is not improperly shared, SWBT has reiterated to relevant employees via letter its policy barring the sharing of CLEC proprietary information with SBC's retail organizations, in accord with SWBT's nondiscrimination obligation. See id. SWBT's policy is consistent with the requirements set forth in the Arbitration Award, Petition of Rhythms Links, Inc. for Arbitration to Establish an Interconnection Agreement with Southwestern Bell Telephone Company, Docket Nos. 20226 & 20272, at 70 (Tex. PUC Nov. 30, 1999) ("Arbitration Award"), and has been memorialized at section 6.5 of the SWBT – Covad Interconnection Agreement. SWBT's letter can be found on the Texas PUC's website – <www.puc.state.tx.us> – and was delivered to Covad when filed with the Texas Commission. Covad misstates the facts when it says that SWBT's letter was not filed. Covad Comments at 13.

[17] To the extent that SWBT's database does contain inaccuracies, SBC's retail operations are equally affected and CLECs suffer no competitive disadvantage.

make-up information in one to two days, which is faster than SBC's retail operations receive that information. Dysart Reply Aff. ¶ 36.

December 1999 Commitments. Contrary to the repeated assertions of Covad, NorthPoint, Rhythms, and Sprint, neither the Texas Commission nor the Arbitrators in the Texas PUC's Rhythms Links arbitration have ever found SWBT's current pre-qualification and qualification system to be discriminatory. During its intensive six-week collaboration with CLECs and the Texas PUC staff in late 1999, SWBT worked to resolve outstanding concerns over access to loop make-up information. At the December 16, 1999 Open Meeting – at which the Texas Commission voted unanimously to endorse SWBT's 271 Application – the system enhancements that SWBT has implemented were explained in great detail. See Texas PUC Dec. 16, 1999 Open Meeting Tr. at 11-20. In particular, SWBT made the following system changes that respond directly to the data CLECs' concerns:

- SWBT provisions loops that have a theoretical loop length of 12,000 feet or less without requiring the manual loop qualification process, and, for these same loops, SWBT performs any necessary conditioning free of charge. See SWBT – Covad Interconnection Agreement, DSL Attach. § 11.4.

- SWBT provisions loops on an "as is" basis when requested by CLECs, whether or not the loop meets the parameters of any xDSL technology.

- SWBT does not require any carrier to submit a Power Spectrum Density ("PSD") mask with a loop qualification request.

- SWBT does not utilize any spectrum management or binder group management system, and has eliminated the Selective Feeder Separation ("SFS") process. See SWBT – Covad Interconnection Agreement DSL Attach. § 9.2. Similarly, SWBT does not set aside or reserve loops for ADSL service. See Texas PUC Evaluation at 63. CLEC DSL orders do not "fall out" or "disappear" for failure to meet any such standard.

- SWBT does not and, under the terms of its interconnection agreements with Rhythms NetConnections and Covad, cannot unilaterally impose any form of spectrum management or technical standards. See Memorandum at 4, Docket Nos. 20226 & 20272 (Tex. PUC filed Jan. 20, 2000); SWBT – Covad Interconnection Agreement DSL Attach. § 4.9.

Sprint's inability to locate contractual "language" proving that SWBT has implemented these and other system enhancements is irrelevant; the Texas Commission confirms that SWBT has indeed implemented such changes. Texas PUC Evaluation at 63. The arbitrated interconnection agreements between SWBT and both Covad and Rhythms contain provisions obligating SWBT to keep these Texas PUC-approved processes in place. See App. B, Tabs 1, 2.

Based in part upon these system and process improvements, the Texas Commissioners concluded that SWBT provides nondiscriminatory access to pre-ordering and ordering processes for xDSL-capable loops. See Texas PUC Evaluation at 65 (the "processes currently in place in Texas . . . give CLECs a meaningful opportunity to compete in the provision of xDSL services").

CLECs' "Internal Data" Regarding Order Rejections. Covad's attempts to substitute anecdote for systematic performance reporting continue with the claim that 74 percent of Covad's orders were initially rejected by SWBT. See Covad Comments at 32. Covad neglects to mention that many of these rejections resulted from Covad's submission of invalid Local Service Requests ("LSRs"), a fact Covad acknowledged in a filing submitted to the Texas PUC on November 23, 1999. See Letter from Timothy P. Leahy, Senior Counsel, SBC, and Christopher P. Goodpastor, Regional Counsel, Covad, to ALJ Katherine D. Farroba, Texas PUC, at 2, Project No. 16251, Investigation of Southwestern Bell Telephone Co.'s Entry into the InterLATA Telecommunications Market – Reconciliation of Covad Data (Tex. PUC filed Nov. 23, 1999) (App. C, Tab 1987). In fact, all of the specific loop orders discussed by Covad were rejected because Covad had requested a loop that would not support the service Covad wished to provide. See Chapman Reply Aff. ¶ 35. Covad's unverified data also pre-date, and thus do not reflect, the Texas PUC's six-week review of DSL issues and the ensuing process changes.

Rhythms' assertion that approximately 80 percent of its orders are initially rejected is similarly dated. See Rhythms Comments at 31; Rhythms' Lopez-Baros Aff. ¶ 17. Like Covad, Rhythms acknowledges that a percentage of order rejections trace to Rhythms' filing of faulty LSRs. See Rhythms' Lopez-Baros Aff. ¶ 12. Rhythms blames the remaining order rejections on SWBT's technical parameters for loops, see id., yet SWBT has eliminated the old spectrum management system to which Rhythms refers, see Texas PUC Evaluation at 63.

CLECs' "Internal Data" Regarding FOC Returns. Covad sensationally contends that it took SWBT an average of 8.6 days from the time it received a complete LSR for ADSL loops to return of a FOC. See Covad Comments at 33. That is incorrect. First, Covad skews SWBT's performance by failing to mention that its LSR to FOC data include the 3-5 day loop qualification interval. After adjustment, Covad's "internal data" are way off the mark. In November and December 1999, Covad received FOCs for about 90 percent of its xDSL loop orders within three days, and better than 95 percent within four days. Dysart Reply Aff. ¶ 92. Unlike Covad's numbers, these figures are supported by a track record of collection and reporting, independent validation, and review by dozens of CLECs, the Texas PUC, and federal regulators.

TELRIC Pricing. The Texas Commission has set interim rates for loop qualification, conditioning, and provisioning of xDSL-capable loops. These rates are extremely low, and the interim charge has been set at zero in some instances. See Arbitration Award at 100, 103; SWBT – Covad Interconnection Agreement DSL Attach. § 11.4.

Despite the low levels of these rates, Covad and MCI WorldCom contend that SWBT cannot satisfy checklist item (ii) because the rates are interim. Yet in the New York Order, this Commission determined that the absence of permanent rates for xDSL-related UNEs should not

stand in the way of section 271 approval until states have had sufficient time to complete cost proceedings for these new offerings, which was not the case with xDSL-related facilities and services. See New York Order ¶ 258. That Commission finding fully applies here.

Indeed, every factor that the FCC relied upon in approving Bell Atlantic's interim xDSL rates is present with respect to SWBT's rates in Texas. As was the case in New York, a cost proceeding is currently pending before the Texas PUC; SWBT is scheduled to file cost studies for xDSL-capable loops and for conditioning on March 15, 2000, and a cost study for loop make-up information on or before May 30, 2000 – by which time SWBT will offer real-time access to all loop make-up information contained in a database. Also, as suggested by the FCC, all of the current charges are temporary and subject to a true-up, and the Texas Commission has a strong track record of setting TELRIC-based rates. See id. ¶ 259; see also Texas PUC Evaluation at 25-27; Auinbauh Reply Aff. ¶ 28.

3. Southwestern Bell Has Additionally Satisfied the Checklist Requirements for xDSL-Capable Loops by Establishing an Operational Separate Advanced Services Affiliate

In the Bell Atlantic New York proceeding, the Commission excused Bell Atlantic from having to meet either of the two new tests for nondisciminatory access to xDSL-capable loops set forth in that decision. The Commission reasoned that "we are faced with a situation in which competitors have been ordering xDSL-capable loops in New York for a relatively short period of time; there has been a recent surge in demand; and xDSL-capable loops remain a small

percentage of loops orders." New York Order ¶ 327. Moreover, the New York PSC had not yet finished its work in this area. Id.[18]

All of the same facts are present in Texas – except for one. In Texas, the state commission made access to xDSL-capable loops a priority, immediately establishing a testing program, setting performance measurements and payment requirements, and "conduct[ing] an extensive review of xDSL provisioning by SWBT." Texas PUC Evaluation at 61. The case for relying upon an "overall showing of loop performance," rather than a specific showing of nondiscrimination in providing xDSL-capable loops, is thus substantially stronger in Texas than it was in New York, because there is greater assurance of immediate state commission oversight of advanced services competition. New York Order ¶ 327.

That said, Southwestern Bell has not stopped at making just one of the two alternative showings contemplated by the New York Order, through the performance data discussed above. The Commission explicitly announced that a Bell company can make the requisite evidentiary showing for xDSL-capable loops "either through proof of a fully operational advanced services affiliate . . . , or through a showing of nondiscrimination in accordance with the guidance provided herein." Id. ¶ 330 (emphasis added); see also id. ¶¶ 334-335. Southwestern Bell, however, has perfected its showing of nondiscriminatory access to xDSL-capable loops by submitting performance data that covers each of the Commission's five reporting categories as described above, while also establishing a fully operational advanced services affiliate. See Southwestern Bell Br. at 43-44.

[18] The Commission also explained that Bell Atlantic was the first Bell company to file a section 271 application after the emergence of xDSL services. New York Order ¶ 327. This can hardly

The Department urges this Commission to abandon the holdings of the New York Order, and to give no practical weight to SBC's establishment of a structurally separate advanced services affiliate in Texas. DOJ Evaluation at 24-27. First, the Department suggests that Southwestern Bell should be required to prove what the Commission already has found – that providing advanced services through a separate affiliate would "provide significant evidence that the BOC complies with the nondiscrimination requirements of the competitive checklist;" "reduce the ability of the BOC to discriminate against competing carriers;" "ensure a level playing field between the BOC and its advanced services competitors;" and encourage entry into the provision of advanced services. New York Order ¶¶ 331-332; see, e.g., DOJ Evaluation at 26-27 ("SBC's application offers no explanation of how [nondiscrimination] would be accomplished merely by transferring its own retail operations to the new affiliate."). Even granting the special consultative role of the Department, the Commission can safely ignore this collateral attack on the New York Order.

Second, the Department maintains that even if a Bell company establishes a separate affiliate, it must then show that "the implementation of the separate affiliate structure has in fact resulted in nondiscriminatory performance." DOJ Evaluation at 26. Although the Department does not say so, this presumably would have to be done through DSL-specific performance measures. And that, of course, is the Commission's alternative to establishing a separate affiliate. The New York Order cannot be read to require a Bell company that establishes a fully operational separate affiliate, also to make the same metric showing of nondiscrimination that it would have had to make "in the absence of a separate affiliate." New York Order ¶ 333.

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be a relevant distinction from Southwestern Bell's Application, which was filed less than three

Third, the Department and some CLECs argue that ASI is not a cognizable separate affiliate because it is not yet "fully operational" and may not be sufficiently separate from SWBT. See DOJ Evaluation at 25, 26; NorthPoint Comments at 6; Covad Comments at 52-56; Rhythms Comments at 47; AT&T Comments at 23. The rules governing ASI's separate operations were set out in the SBC/Ameritech Merger Order, and are essentially identical to the ones to which Bell Atlantic subsequently committed. See Southwestern Bell Br. at 43-44. In the New York Order, the Commission endorsed the separate affiliate requirements that had been outlined for SBC (and accepted by Bell Atlantic), saying that Bell Atlantic's commitment to a separate advanced services affiliate operating largely in accord with the merger conditions provided "assurance that competing carriers in New York will have nondiscriminatory access to xDSL-capable loops in the future." Id. ¶ 331. The only difference here is that SBC is some six months ahead of Bell Atlantic in meeting the separate affiliate conditions of the SBC/Ameritech Merger Order, so that as of late February 2000, ASI will order all unbundled loops that it requires using the same interfaces and procedures as CLECs. Brown Aff. ¶ 5 & Attach. A; Brown Reply Aff. ¶¶ 4-5. ASI thus provides "assurance" of nondiscriminatory access today.[19]

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weeks after release of the New York Order.

[19] The operational specifics of ASI's relationships with the SBC incumbent LECs, which have been questioned by DOJ and other commenters, are further detailed in the Reply Affidavits of Lincoln Brown (ASI compliance), Sherry Ramsey (ILEC SBC compliance), and Jeffrey Weber (ASI compliance). Contrary to AT&T's claims, SWBT need not provide AT&T line sharing via the voice channel of a line in order to demonstrate that ASI does not receive preferential treatment from SWBT. See AT&T Comments at 11-13. AT&T is free to offer both voice and data service over the UNE Platform or other UNE arrangements, whether by itself or in conjunction with its xDSL partner, IC Communications. The Line Sharing Order did nothing to alter those options; it merely allowed data CLECs to access the high-frequency portion of loops over which the incumbent already provides voice service. See 47 C.F.R. § 51.319(h)(3).

B. SWBT Satisfies the Hot-Cut Performance Standards of this Commission and the Texas PUC

In its Order approving Bell Atlantic's application, this Commission judged Bell Atlantic's provision of hot cuts based on the totality of the evidence. The Commission found sufficient "on-time hot cut performance at rates at or above 90 percent, in combination with the evidence indicating that fewer than five percent of hot cuts resulted in service outages and that fewer than two percent of hot cut lines had reported installation troubles." New York Order ¶ 309. As described below, Southwestern Bell's overall performance in performing hot cuts is at least the equal of Bell Atlantic's in New York, and in any event satisfies the statutory nondiscrimination standard.

SWBT offers CLECs two different hot-cut processes: a "coordinated conversion" process for more complex hot cuts and cuts involving large numbers of lines, and a "frame due time" ("FDT") process for cuts that do not require the same level of coordination between SWBT and the CLEC. See Conway Aff. ¶¶ 75-79 (App. A, Part A-4, Tab 3). SWBT has long reported performance data on coordinated conversions, and recently began collecting data on FDT conversions pursuant to a new Texas PUC-required performance measurement (114.1) for cut-over intervals. See Texas PUC Evaluation at 57. These data show timely and reliable hot-cut performance for both methods. Conway Reply Aff. ¶ 3.

- In December 1999, for example, 95 percent of all loop cut-overs using the coordinated conversion process and 97 percent of all loop cut-overs using the FDT process were completed within two hours, when CLEC-caused misses are excluded. Id. ¶ 3; Jan. 21, 2000 Ex Parte.

- Even when CLEC-caused misses are included, SWBT still met the two-hour benchmark for 93 percent of coordinated loop conversions and 95 percent of FDT loop cut-overs. Conway Reply Aff. ¶ 3; Jan. 21, 2000 Ex Parte; Dysart Aff. ¶¶ 652-656.

- As explained in Southwestern Bell's Application, SWBT also collected cut-over interval data for August, September, and October 1999 to supplement SWBT's routine performance monitoring reports for those months. That data showed that all coordinated hot-cut ("CHC") orders with recorded start and stop times in September and October were completed within two hours. Conway Reply Aff. ¶ 4. In August, 94 percent of coordinated hot-cut orders were completed within two hours. Id.

DOJ wrongly suggests that the New York Order established a national, one-hour benchmark for all hot-cut completions. DOJ Evaluation at 30-32. Even if the Department were right, and SWBT were tested against a one-hour interval for all hot-cut orders regardless of size, SWBT's on-time performance would still be above 90 percent; SWBT completed 90.5 percent of all hot cuts within one hour in December. Dysart Reply Aff. ¶ 45. But the truth is that there was no absolute one-hour benchmark in New York, where on-time performance was measured against "a fixed period of time ranging from one hour to eight hours." New York Order ¶ 292. Likewise, the rule that came out of the Bell Atlantic New York proceeding was simply that on-time performance should be measured against "the [State] Commission's adopted standard" or, alternatively, a standard of meeting the state commission's benchmark 90 percent of the time. New York Order ¶¶ 292-298.

The Texas PUC established a benchmark interval for completing hot cuts in December 1999, when it set a two-hour interval for orders of up to 24 loops in connection with Performance Measurement 114.1.[20] See Letter from Kelly M. Murray, SWBT, to Administrative Law Judge Katherine D. Farroba, Texas PUC, Project No. 16251, filing revised Attachment 17 to the Texas 271 Agreement (Tex. PUC filed Jan. 7, 2000) (App. C, Tab 2034) (App. III of revised T2A,

[20] By comparison with Bell Atlantic's small-order benchmark of up to 10 loops within 1 hour (or a minimum of 6 minutes per loop), the Texas PUC's benchmark requires SWBT to complete each loop in a minimum time of 5 minutes. Dysart Reply Aff. ¶ 48.

revised Version 1.6 of SWBT's Business Rules); Texas PUC Evaluation at 59. Applying the Texas PUC's standard to the available data shows an on-time performance in the 94 to 100 percent range, as explained above. This is substantially better than the 90 percent reference mark set in the New York Order.

SWBT's Performance Measures 114 and 115 further confirm on-time performance. They respectively gauge SWBT's timeliness in beginning and ending its part of a coordinated conversion. These measures show that from June 1999 through December 1999, SWBT never caused premature disconnects in more than 2 percent of its coordinated hot cuts, only once exceeding 0.5 percent. Conway Reply Aff. ¶ 6; see also Texas PUC Evaluation at 58 (measures "demonstrate that SWBT has been providing compliant performance regarding coordinated conversions for the months of August through November"). The validity of these results was challenged during the Texas PUC's section 271 proceedings, and the Texas PUC confirmed SWBT's compliant performance. Id. at 58-59; Dysart Aff. ¶ 657.

SWBT's coordinated conversion and FDT processes are also reliable. The Texas PUC established an Installation Report Within 30 Days (I-30) measure to report SWBT's quality of provisioning for loops in general. See Dysart Aff. Attach. B, Measurement 59. SWBT does not disaggregate this measure for hot cuts. However, Southwestern Bell has submitted data for Installation Reports Within 10 Days (I-10) for December 1999, which more closely approximate the I-7 reports deemed relevant in the New York Order. These I-10 reports showed a trouble rate of 2.2 percent for coordinated conversions and 2.9 percent for FDT hot cuts, with an average rate of 2.6 percent. Bell Atlantic reported just slightly fewer trouble reports in its successful New York application, but Bell Atlantic measured the trouble reports received within only the first 7 days after installation, rather than 10 days. New York Order ¶ 300 n.956. Thus, SWBT's

trouble rate and Bell Atlantic's trouble rate are equivalent. Accord DOJ Evaluation at 33. When viewed in the aggregate (i.e., combined CHC and FDT hot-cut data), SWBT's performance actually exceeds Bell Atlantic's – a 1.4 percent trouble report rate within 10 days. Dysart Reply Aff. ¶ 49.

Finally, SWBT performs both coordinated and FDT conversions without causing a substantial number of service outages. A data reconciliation between AT&T/TCG and SWBT examined hot cuts and attempted to determine for each line and order whether an outage occurred, and, if so, who was responsible for causing the outage. The reconciled data show that outages attributable to SWBT ranged from 1.6 to 7.1 percent of total lines ordered from August through November 1999, or an average of 4.3 percent over these months.[21] Conway Reply Aff. ¶¶ 13-15 & Appendix 1. Again, this is approximately the same as the New York Order's safe harbor of 5 percent. See New York Order ¶ 309. A separate AT&T/SWBT data reconciliation for December 1999 showed a low outage rate of 1.6 percent, matching the prior best month in the data reconciliation. Conway Reply Aff. ¶ 15 & Confidential Attach. A.[22]

These hard numbers – many of them specifically verified under the Texas PUC's supervision – sharply contrast with the vague assertions of AT&T and others that SWBT's hot-cut processes are "not commercially viable." AT&T Comments at 31. Likewise, while the

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[21] It is more informative to discuss outages in terms of lines, rather than orders, because orders often represent multiple lines. For example, if, in an order for dozens of lines, only one line experiences an outage, considering the entire order tainted would greatly overstate the practical significance of the outage.

[22] Data for FDT conversions, which has been collected for December 1999, show a high percentage of SWBT-caused outages in December 1999. This is due in part to an exceedingly small number of orders disproportionately emphasizing a small number of outages. Of the eight outages SWBT caused in December, five were due to training issues that have since been addressed. See Conway Reply Aff. ¶ 14.

Department and other commenters fault SWBT for failing to provide more data on the new FDT process, see DOJ Evaluation at 35-36, the truly noteworthy point is that the issue is resolved: SWBT is disaggregating all hot cut measures by coordinated conversions and FDT conversions, effective with February 2000 data. Jan. 21, 2000 Ex Parte; Dysart Reply Aff. ¶ 46. The Department, moreover, is in a particularly poor position to suggest that additional measurements are necessary. Having agreed that compliance with 66 of SWBT's 131 measures would be sufficient to support section 271 relief, see Dysart Aff. ¶ 22 & Attachs. E, F; having had a Department attorney sit in on the sessions at which the Texas PUC heard the arguments for and against various measures, see Dysart Reply Aff. ¶ 11; and having received performance results from SWBT since March 1998 without any suggestion of concern prior to the filing of this Application, id., DOJ cannot credibly claim that SWBT's hot-cut measurements should be "cause for concern." DOJ Evaluation at 34.

III. SOUTHWESTERN BELL SATISFIES OTHER CHECKLIST REQUIREMENTS

In addition to xDSL-capable loops and hot cuts, commenters have raised in scattershot fashion a variety of additional issues concerning checklist compliance. Even the commenters themselves, however, cannot agree on the significance of these issues. Some are raised by only a single CLEC. None is in common across even a substantial number of oppositions, suggesting that none of these issues has had any real competitive effects. Indeed, even DOJ, which echoes the CLECs on a few of these issues, does not suggest that they are sufficiently serious, individually or collectively, to warrant denial of SWBT's Application. See id. at 3.

We respond to all these allegations in detail below. A couple of general points are in order first, however. With few exceptions, these allegations have already been presented to the Texas PUC, which after careful investigation either found them unjustified or corrected any